

REMARKS

In the above-referenced Office Action, the previously issued rejection(s) were maintained. In addition, the Examiner asserted that the declaration filed by Applicant was ineffective to overcome the cited Linder et al. reference. Applicant respectfully traverses the merits of the rejection and the dismissal of the affidavit.

In antedating a reference, Applicant must establish conception of the invention prior to the effective date of the reference and, where relevant, diligence from that effective date until constructive reduction to practice.

The diligence requirement is one of reasonableness that does not require the inventor or his attorney to "drop all other work and concentrate on the particular invention involved." MPEP 2138.06.

Further, the "diligence of an attorney in preparing and filing patent application [sic] inures to the benefit of the inventor." MPEP 2138.06

In the present application, the Examiner has acknowledged that Applicant's affidavit has established conception prior to the effective date of the reference, which to the extent supported by the Provisional Application from which benefit is claimed, is October 5, 1999. Thus, the critical period for diligence is from October 5, 1999 until March 15, 2000 which is the date of filing a provisional patent application from which the present application claims priority.

Attached hereto is a screenshot of Applicant's patent docketing system for a disclosure corresponding to the present application. As indicated, the "date submitted" was October 5, 1999 and corresponds to a date the previously submitted disclosure was assigned to a Patent Review Board for consideration and review. The "date approved" was October 25, 1999. This date corresponds to the date on which Applicant's relevant Patent Review Board concluded review of the disclosure previously submitted by the inventors and approved the filing of a patent application at corporate expense. The disclosure was then directed to the appropriate attorney and docketed accordingly. The disclosure was then taken up, in the normal course of business, based upon priority; an application was prepared with the inventor's assistance; and the prepared application was

filed. The delay between the inventor submission, board approval, preparation and filing is normal, reasonable and diligent.

Applicant respectfully asserts that conception prior to the effective date of the reference has been established and that the inventors and attorneys satisfied reasonable requirements of diligence during the critical period. As such, Applicant respectfully asserts that the reference is antedated and the rejections of record obviated.

Applicant respectfully asserts that the pending claims are in condition for allowance and requests notice of the same. Further, Applicant reserves the right to re-present any originally filed, cancelled, and/or previously unclaimed subject matter in a subsequently filed continuing application without prejudice or disclaimer.

Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

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Disclosure Number: P0008945700

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Owner:

Sub Division: L8010 Brady PSD - LG10034

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Group: Cardiac Rhythm Management

Created: 10/5/1999

Updated: 7/12/2002 6:30:00 AM

By: SLEC

Responsible Party:

Outside Counsel #:

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